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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 THE REV. DR. MICHAEL
12 A. NEWDOW, et al.,

NO. CIV. S-05-17 LKK/DAD

13 Plaintiffs,

14 v.

O R D E R

15 THE CONGRESS OF THE UNITED
16 STATES OF AMERICA, et al.,

17 Defendants.
_____ /

18 On October 11, 2005, the court ordered plaintiffs to file
19 affidavits in support of an injunction regarding their standing and
20 the merits. Defendants were ordered to file a motion for summary
21 judgment as to Elverta Joint Elementary School District, if
22 appropriate. Defendants were also ordered to file responsive
23 affidavits, if any.

24 The court is in receipt of the parties' affidavits and
25 motions. On October 25, 2005, the parties stipulated that
26 plaintiffs Jan Roe and RoeChild-1 are dismissing the complaint in

1 its entirety as it pertains to Elverta Joint Elementary School
2 District, resulting in the dismissal from this lawsuit of DoeChild-
3 1 and the Elverta Joint Elementary School District.

4 On November 16, 2005, Elk Grove Unified School District
5 ("EGUSD") moved to dismiss plaintiffs Jan Doe, Pat Doe and
6 DoeChild's claims against it.¹ Defendant EGUSD explains that the
7 declaration of DoeChild filed in support of the request for a
8 permanent injunction establishes that he or she currently attends
9 one of EGUSD's middle schools and that his or her teacher does not
10 lead the students in reciting the Pledge, and that the last time
11 the Pledge was recited in his or her classroom was last year. They
12 thus contend that because DoeChild is no longer in elementary
13 school, he or she is not affected by EGUSD's Patriotic Observances
14 Elementary School Administrative Regulation which states that
15 "[e]ach elementary school class [shall] recite the pledge of
16 allegiance to the flag once each day." Mot. at 2. The court has
17 confirmed that DoeChild is currently a student in one of EGUSD's
18 Middle Schools and that DoeChild's teacher does not lead him or her
19 in saying the Pledge. DoeChild Decl. at ¶¶ 4, 9.²

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22 ¹ Defendants explained that they were not made aware of the
23 fact that the Doe plaintiffs do not have standing to bring a claim
against EGUSD until October 24, 2005.

24 ² The Pledge of Allegiance is not recited on a daily basis
25 in EGUSD middle and high schools. Pursuant to EGUSD AR 6115, the
26 Pledge is just one way that secondary schools may satisfy the
patriotic observance requirement of Education Code § 52720. Ladd
Decl. at ¶ 4.

1 With respect to EGUSD, in the First Amended Complaint filed
2 on behalf of plaintiffs, the policy complained of applies only
3 elementary schools. Because plaintiff DoeChild is no longer in
4 elementary school, the Doe plaintiffs are unable to establish an
5 injury-in-fact that provides them standing to challenge the EGUSD
6 Patriotic Observance Policy and they fail to meet the legal
7 standard for issuance of a permanent injunction. DoeChild states
8 that he or she is afraid that the "Pledge will be recited again
9 every day next year" and that "this will be a bigger problem," but
10 this fear is insufficient to constitute actual injury or imminent
11 harm. See Friends of the Earth v. Laidlaw Env'tl. Svcs. Inc., 52
12 U.S. 167, 180-81 (2000) (To have standing, injury or harm must be
13 actual or imminent, not conjectural or speculation). Accordingly,
14 based on the declarations and papers filed herein, the court hereby
15 ORDERS as follows:

16 1. Doe plaintiffs are DISMISSED on the ground that they lack
17 standing to challenge the EGUSD Elementary School Pledge Policy.
18 As a result, EGUSD is DISMISSED as a defendant in this case.

19 2. Defendant Rio Linda School District is PROHIBITED from
20 applying its Board Policy AR 6115 to the extent the policy requires
21 the recitation of the Pledge of Allegiance so as to fulfill the
22 patriotic exercise requirement of California Education Code Section
23 52720. Employees and agents of defendant Rio Linda School District
24 are also enjoined from leading students in reciting the Pledge of
25 Allegiance for the purpose of satisfying the patriotic exercise
26 requirement of California Education Code 52720.

3. The permanent injunction issued by this Court as to Rio Linda School District is hereby STAYED pending the resolution of any and all appeals regarding this matter brought before the U.S. Court of Appeals for the Ninth Circuit and the United States Supreme Court.

IT IS SO ORDERED.

DATED: November 18, 2005.

/s/Lawrence K. Karlton

LAWRENCE K. KARLTON

SENIOR JUDGE

UNITED STATES DISTRICT COURT